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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/813,244 | 03/29/2004 | William S. Sunderland | P18436 | 4834 |

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EXAMINER

VO, THANH DUC

| ART UNIT | PAPER NUMBER |
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2189

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 10/813,244 | Applicant(s) SUNDERLAND ET AL. | |
| | Examiner Thanh D. Vo | Art Unit 2189 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/11/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is responsive to the Application filed on March 29, 2004.

Claims 1-27 are presented for examination. Claims 1-27 are pending.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on October 11, 2005 was filed after the mailing date of the Application on March 29, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. In claims 19-27, Applicant sets forth an "article of manufacture". In supporting this language in the specification, Applicant sets forth on page 5, paragraph [0017], lines 25-28, that article of manufacture includes "a transmission media", such as "network transmission line, wireless transmission media, signals propagating through space, radio waves, infrared signals, etc". Therefore, giving claim 19 (for example) a reasonable interpretation consistent with the specification, an "article of manufacture" could embody transmission or communication media (i.e. a radio wave).

However, article of manufacture, such as those set forth by the Applicant in the specification, are not tangible. An article of manufacture, such as a radio wave, cannot tangibly embody a computer program or process since a computer cannot understand/realize (i.e. execute) the computer program or process when embodied on the article of manufacture. Computer programs or processes are only realized within the computer when stored in a memory or storage element (such as RAM or ROM). Therefore, an article of manufacture does not meet the "useful, concrete, and tangible" requirement as set forth in *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02, and hence claims 19-27 are not statutory under 35 U.S.C. 101.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 3 recites the limitation "the data seek controller" in lines 3-5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 8-11, 13, 14, 17-20, 22, 23, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Vishlitzky et al. (5,819,310).

As per claims 1, 10, and 19, Vishlitzky et al. substantially disclosed a method for locating data in a storage device, comprising:

a first storage area coupled to a bus (col. 4, lines 39-42, and Fig. 1, item 12);

a second storage area (col. 4, lines 39-42, and Fig. 1, item 17);

receiving a request for data (col. 7, lines 8-11);

simultaneously initiating a search (col. 7, line 11) for the data on at least two storage areas using a different search technique for each storage area (col. 7, lines 53-63 regarding *read mode/technique*), wherein each storage area includes a copy of the data (col. 7, lines 24-36); and

terminating the search on each of the storage areas when an indication is received from at least one of the storage areas that the data was located. See col. 10, line 59 – col. 11, line 4.

As per claims 2, 11, and 20, Vishlitzky et al. disclosed a method further comprising:

identifying the at least two storage areas that include the copy of the data. See col. 4, lines 39-47.

As per claims 4, 13, and 22, Vishlitzky et al. disclosed a method, wherein the number of storage areas to be searched is user specified. See col. 4, lines 42-51, *wherein all of the storage devices or area are transparent to the user and must be designed and specified by the one in the art.*

As per claims 5, 14, and 23, Vishlitzky et al. disclosed a method, wherein the at least two storage areas are located on two separate storage devices. See Fig. 1, item 12 and 17, and col. 3, lines 20-23.

As per claims 8, 17, and 26, Vishlitzky et al. disclosed a method, wherein at least one search technique is user specified. See col. 11, lines 53-54.

As per claims 9, 18, and 27, Vishlitzky et al. disclosed a method, further comprising:

returning the data in response to the request. See col. 20, lines 45-47.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 12, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vishlitzky et al. (5,819,310) in view of Asmuth (US 2004/0199683 A1).

As per claims 3, 12, and 21, Vishlitzky et al. disclosed a method, further comprising:

identifying the at least two storage areas based on at least one of a location of the storage areas relative to the data seek controller (col. 3, lines 53-61),

Vishlitzky et al. failed to disclose the method of determining the data transfer rate and the type of transmission medium. However, Asmuth disclosed a method of determining/identifying the transfer and transmission medium in order to transfer the requested data (page 4, claim 2, paragraph #3). At the time of the Applicant's invention it would have been obvious to one having an ordinary skill in the art to readily recognize that it is advantageous to determine the transfer rate and the transmission medium in order to minimize the latency and seek time and avoiding any effect to the data throughput during the read operation.

7. Claims 6, 15, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vishlitzky et al. (5,819,310) in view of Honarvar et al. (US 2003/0204426 A1)

As per claims 6, 15, and 24, Vishlitzky et al. failed to disclosed a method, wherein the search technique for a first of the at least two storage areas is a top down search and wherein the search technique for a second of the at least two storage areas is a bottom up search.

Honarvar et al. disclosed a top down search and a bottom up search (page 9, paragraph 0139, last sentence). At the time of the Applicant's invention, it would have been obvious to one having an ordinary skill in the art to take advantage of the top-down search and bottom-up search techniques as disclosed by Honarvar et al and implement into the system of Vishlitzky et al. The motivation of doing so is to enabling the system to search at the most efficient manner in respect to the location of a searched strategy component as Honarvar et al. substantially disclosed in page 9 and entire paragraph 0140.

8. Claims 7, 16, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vishlitzky et al. (5,819,310) in view of Dahlen (5,317,749).

As per claims 7, 16, and 25, Vishlitzky et al. failed disclosed a method, wherein at least one search technique is selected in a round robin manner.

Dahlen disclosed the round robin manner (col. 10, lines 43-44). It would have been obvious to one having an ordinary skill in the art at the time of the Applicant's invention to implement the round robin method in Vishlitzky et al. system so that none of the search technique is being locked out or not being utilized at its most efficiency as taught by Dahlen at col. 10, lines 43-44.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh D. Vo whose telephone number is (571) 272-0708. The examiner can normally be reached on M-F 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Reginald G. Bragdon can be reached on (571) 272-4204. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thanh Vo
Patent Examiner
Art Unit: 2189
3/17/2006